

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JANICE VOKURKA,
Administrator of the Estate
of Robert Thomas Leach, II

Plaintiff,
v.
Civil Action 2:22-cv-652
Judge Sarah D. Morrison
Magistrate Judge Chelsey M. Vascura

WARDEN TOM SCHWEITZER, *et al.*,

Defendants.

REPORT AND RECOMMENDATION

This matter is before the undersigned for a Report and Recommendation on the Court's March 14, 2023 Show Cause Order (ECF No. 99). For the reasons that follow, it is **RECOMMENDED** that Plaintiff's claims against Defendant Douglas Hunt be **DISMISSED WITHOUT PREJUDICE** pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute.

The docket reflects that the Clerk issued certified mail service to Defendant Douglas Hunt on January 24, 2023 (ECF No. 77). Although the return receipt has not yet been received by the Clerk's Office, the United States Postal Service's online tracking information reflects that the certified mailing was successfully delivered on February 9, 2023. Accordingly, Defendant Hunt's answer was due March 2, 2023. Although Hunt failed to file a timely answer or other response to the Complaint, Plaintiff did not apply for and obtained an entry of default from the Clerk pursuant to Federal Rule of Civil Procedure 55(a). On March 14, 2023, the Court ordered Plaintiff to show cause why the claims against Hunt should not be dismissed for want of

prosecution within fourteen days of the Show Cause Order unless she had filed an application for entry of default in the interim. (ECF No. 99.)

To date, Plaintiff has not responded to the Show Cause Order and has not filed an application for entry of default against Hunt. It is therefore **RECOMMENDED** that Plaintiff's claims against Hunt be **DISMISSED WITHOUT PREJUDICE** pursuant to Rule 41(b) for failure to prosecute.

PROCEDURE ON OBJECTIONS

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A District Judge of this Court shall make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a District Judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the District Judge review the Report and Recommendation *de novo*, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

/s/ *Chelsey M. Vascura*
CHELSEY M. VASCURA
UNITED STATES MAGISTRATE JUDGE